

**United States Department of Labor
Employees' Compensation Appeals Board**

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hartford, CT, Employer**

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**Docket No. 21-1422
Issued: May 24, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 24, 2021 appellant filed a timely appeal from a July 29, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a medical condition causally related to the accepted February 11, 2021 employment incident.

FACTUAL HISTORY

On February 17, 2021 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 11, 2021 he injured his right leg, thigh, buttocks area, and the right side of his lower back when lifting flats sequencing systems tray while in the performance of duty. On the reverse side of the claim form, his supervisor, T.M., acknowledged

¹ 5 U.S.C. § 8101 *et seq.*

that appellant was injured while in the performance of duty. Appellant stopped work on February 11, 2021.

In support of his claim, appellant submitted a February 11, 2021 authorization for examination and/or treatment (Form CA-16) from a health and resource management specialist, B.K., authorizing office and/or hospital treatment as necessary for the effects of strain and pain of the lower back.

In a duty status report (Form CA-17) also dated February 11, 2021, Caitlin Cole, a physician assistant, indicated that appellant was injured when he lifted a 30-pound mail tray and carried it 25 feet before placing it down. Ms. Cole found tenderness and tightening of the right lower back and radiating pain down to the right posterior thigh. She diagnosed a muscle spasm and advised that appellant should not return to work. In a medical form report of even date, Ms. Cole noted that appellant sustained an injury to his right leg, thigh, buttocks, and lower back.

Appellant subsequently submitted a February 16, 2021 medical report from Dr. Kenneth Kramer, a Board-certified orthopedic surgeon specializing in spinal conditions, relating that appellant developed sudden lower back pain after lifting a tray at work on February 11, 2021. Dr. Kramer noted that appellant reported constant pain in the right lumbar region with radiation to the buttock and thigh, as well as uncomfortable ambulation, and had been unable to work since the date of injury. His examination revealed significant right-sided lumbar antalgia, guarding, stooping, and limitations in lumbar motion producing right lumbosacral pain with right sciatic notch tenderness and positive right sciatic signs. Dr. Kramer indicated that lumbopelvic x-rays taken on the date of examination were generally unremarkable. He diagnosed sciatica of the right side. Dr. Kramer advised that appellant remained unable to work. In a work excuse note of even date, he noted that appellant should remain off work until his follow-up appointment on February 22, 2021.²

In a February 22, 2021 report, Dr. Kramer noted appellant's persistent, bothersome anterolateral thigh and leg paresthesias. His examination revealed right-sided antalgia. Dr. Kramer diagnosed a herniated lumbar disc and sciatica of the right side and advised that appellant remained totally temporarily disabled. In an attending physician's report (Form CA-20) of even date, he related appellant's history of injury and noted that February 16, 2021 x-rays were unremarkable, but a February 19, 2021 MRI scan showed a herniated disc. Dr. Kramer diagnosed sciatica and affirmatively indicated by checking a box marked "Yes" that appellant's condition was caused or aggravated by the claimed employment incident. He indicated that appellant was temporarily totally disabled from February 16 through March 1, 2021, when he would be reevaluated. A Form CA-17 and work excuse note of even date advised the same.

In a development letter dated March 2, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him as to the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

² On February 19, 2021 appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine, which revealed L4-5 right foraminal disc herniation, mild disc bulging, and mild bilateral facet arthropathy; L3-4 minimal disc bulging and small right subarticular-foraminal disc protrusion with an annular fissure; and L5-S1 minimal disc bulging, central-left paracentral disc protrusion with an annular fissure, and mild bilateral facet arthropathy.

OWCP subsequently received a February 11, 2021 medical form report from Ms. Cole relating appellant's history of injury. Ms. Cole's examination revealed tenderness to palpation in the middle and lower right back and glute. She diagnosed a muscle spasm and administered a ketorolac injection.

In a March 1, 2021 medical report, Dr. Kramer noted that appellant continued to experience debilitating right sciatica and limitations on standing and sitting, but that physical therapy was helping somewhat. He continued to diagnose a herniated lumbar disc and sciatica of the right side, as well as a workplace accident. Dr. Kramer advised that appellant should remain on temporary total disability. In a work status report of even date, he affirmatively indicated that appellant's lumbar condition was work related.

Dr. Kramer, in a March 15, 2021 medical report, related appellant's ongoing symptoms and continued to diagnose sciatica of the right side and a workplace accident. He advised that appellant should remain on temporary total disability. In a Form CA-17, Form CA-20, and work status report of even date, Dr. Kramer indicated that appellant's condition was work related.

In an undated report of work status (Form CA-3), B.K., an employing establishment official, indicated that appellant stopped work on February 12, 2021 and returned to work full time with restrictions on March 30, 2021.

By decision dated April 5, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted February 11, 2021 employment incident.

Appellant subsequently submitted a March 29, 2021 medical report from Dr. Kramer in which he diagnosed sciatica of the right side and a workplace accident. Dr. Kramer reported that appellant was improving and was cleared to return to work with a 20-pound lifting limit. In a Form CA-17 of even date, Dr. Kramer diagnosed lumbar strain and advised that appellant could return to work on March 29, 2021 with restrictions on lifting, carrying, standing, walking, twisting, pulling, and pushing. His work status report of even date affirmatively indicated that appellant's condition was work related.

In an April 19, 2021 medical report, Dr. Kramer noted that appellant continued to improve and could return to regular work. He diagnosed sciatica of the right side, a lumbar sprain, and a workplace accident. Dr. Kramer directly addressed OWCP's April 5, 2021 decision on the basis of causal relationship, stating that the denial was "clear impedimentary nonsense," explaining that the mechanism of injury was well described in his medical report from February 16, 2021 and noting that appellant's injury was documented at work. In a Form CA-17 and work status report of even date, he indicated that appellant's condition was work related and that he could return to work without limitations on April 20, 2021.

On May 5, 2021 appellant requested reconsideration.

OWCP also received May 10 and June 28, 2021 reports from Dr. Kramer, noting that appellant continued to improve, but had residual lower back pain. In the May 10, 2021 report, Dr. Kramer diagnosed a herniated lumbar disc, lumbar sprain, and a workplace accident. In the June 28, 2021 report, he diagnosed a lumbar sprain and a workplace accident and noted that appellant was tolerating his regular work.

By decision dated July 29, 2021, OWCP denied modification of its April 5, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted February 11, 2021 employment incident.

³ *Supra* note 1.

⁴ *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In a February 16, 2021 medical report, Dr. Kramer related that appellant developed sudden lower back pain after lifting a tray at work on February 11, 2021 and diagnosed sciatica of the right side and an acute lumbar injury. In medical reports dated March 1, March 15, March 29, April 19, May 10, and June 28, 2021, he indicated that appellant sustained a workplace accident. In forms CA-17 dated March 15 and April 19, 2021, Dr. Kramer diagnosed work-related sciatica on the right side. Similarly, in forms CA-20 dated February 22 and March 15, 2021 and in work status reports dated March 1, March 15, March 29, and April 19, 2021 he responded affirmatively that the diagnosed condition was caused or aggravated by the claimed employment incident. Although Dr. Kramer suggested a work-related cause for appellant's lower back condition in each report, he did not provide a rationalized medical opinion relating the specific diagnosed condition to the February 11, 2021 employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹¹ Therefore, these reports are insufficient to establish appellant's traumatic injury claim.

In a February 22, 2021 report, Dr. Kramer diagnosed a herniated lumbar disc and sciatica of the right side. In work excuse notes dated February 16 and 22, 2021, he advised that appellant should remain off work pending reevaluation. In a March 29, 2021 Form CA-17, Dr. Kramer related appellant's history of injury, diagnosed lumbar strain, and advised that appellant could return to work on March 29, 2021 with restrictions. However, he did not offer an opinion on causal relationship in any of this evidence. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

The remaining medical evidence consists of medical records by Ms. Cole, a physician assistant. The Board has held that medical reports signed solely by a physician assistant, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.¹³ Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing that his medical condition is causally related to the accepted February 11, 2021 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

¹¹ *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹² *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physician assistant is not considered a physician as defined under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.¹⁴

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted February 11, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ The Board notes that the employing establishment issued a Form CA-16, dated February 11, 2021. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); V.S., Docket No. 20-1034 (issued November 25, 2020); J.G., Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).